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02-359

November 7, 2002

**VIA HAND DELIVERY**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th St., S.W. - TW-A325  
Washington, D.C., 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

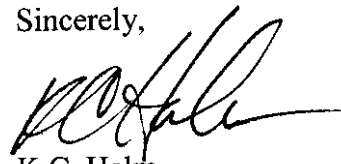
**Re: Petition of Cavalier Telephone, LLC for Preemption of the Jurisdiction  
of the Virginia State Corporation Commission Pursuant to 47 U.S.C. 252(e)**

Secretary Dortch:

Enclosed please find **an** original and four (4) copies of the Petition of Cavalier Telephone LLC for Preemption of the Jurisdiction of the Virginia State Corporation Commission pursuant to 47 U.S.C. 252(e). Copies of this Petition have been served on persons identified in the attached service list.

Please date-stamp as received the enclosed "Stamp & Return" copy, and return it in the enclosed envelope provided for your convenience. Please call me with any questions regarding this filing.

Sincerely,

  
K.C. Halm

cc: Service List  
Stephen T. Perkins

Before the  
Federal Communications Commission  
Washington, D.C. 20554

**ORIGINAL**

**RECEIVED**

NOV - 7 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Petition of Cavalier Telephone, LLC )  
Pursuant to Section 252(e)(5) of the )  
Communications Act for Preemption )  
of the Jurisdiction of the Virginia State )  
Corporation Commission Regarding )  
Interconnection Disputes with Verizon )  
Virginia Inc. and for Arbitration )

WC Docket No. 02-\_\_\_\_\_

**PETITION OF CAVALIER TELPEHONE, LLC**

Cavalier Telephone, LLC (“Cavalier”), by counsel, and pursuant to § 252(e) of the Communications Act, as amended (“the Act”), 47 U.S.C. § 252(e), and § 51.803 of the rules of the Federal Communications Commission (“the Commission”), 47 C.F.R. § 51.803, respectfully petitions the Commission to preempt the jurisdiction of the Virginia State Corporation Commission (“the SCC”) to arbitrate an interconnection agreement with Verizon Virginia Inc. (“Verizon”). This petition stems from the SCC’s refusal to act on Cavalier’s request for arbitration of an interconnection agreement with Verizon pursuant to § 252(b) of the Act. Because the SCC refused to act, Cavalier asks the Commission to assume jurisdiction over, and arbitrate, this matter.

**1. Background**

On January 13, 1999, Cavalier entered into an interconnection agreement in Virginia with Verizon’s predecessor in interest, Bell Atlantic-Virginia, Inc. (“BA”), opting into the agreement between BA and MCImetro Access Transmission Services of

Virginia Inc. (“MCI metro”). The SCC approved the agreement on June 21, 1999, in Case No. PUC990048.

The original MCI metro agreement expired on July 17, 2000, but its terms continue in effect month-to-month until a successor agreement becomes effective. (See Interconnection Agreement, Part A, ¶ 3.1, on file in SCC Case No. PUC990048.) As described in the attached affidavit of Martin W. Clift, Jr., Cavalier formally requested negotiations pursuant to § 252 of the Act on March 6, 2002. On August 14, 2002, after several months of unsuccessful negotiations, Cavalier filed with the SCC a petition for arbitration of nineteen unresolved issues with Verizon. The SCC docketed the case as No. PUC-2002-00171. Verizon filed its response on September 9, 2002, raising six additional issues, and Cavalier filed its response to these six new issues on October 4, 2002.

On October 11, 2002, the SCC issued an Order of Dismissal in Case No. PUC-2002-00171, based on the following reasoning:

Cavalier brings its Arbitration Petition pursuant to 47 U.S.C. §§ 251 and 252 and the effective rules implementing these provisions of the Act, issued by the Federal Communications Commission (“FCC”) in its Local Competition Order. Cavalier also relies upon this Commission’s Procedural Rules for Implementing §§ 251 and 252 of the Act (20 VAC 5-419-10 et seq.). While 20 VAC 5-400-180 F 6 provides for our “arbitration” of contested interconnection matters, Cavalier submits its Arbitration Petition for consideration according to the Act and not simply under state law. Cavalier recognizes in its Arbitration Petition that the Commission may choose to decline to exercise jurisdiction over this matter and instead refer it to the FCC. Cavalier states that it does not oppose such consideration of the Arbitration Petition by the FCC.

The Commission has declined to waive sovereign immunity under the Eleventh Amendment to the Constitution of the United States. We have avoided waiver of our immunity and explained our reasons in the Commission’s Order of Dismissal of the Application of AT&T Communications of Virginia, Inc., et al., For Arbitration with Verizon Virginia, Case No. PUC-2000-00282, issued

December 20, 2000 ("AT&T Dismissal Order"). We repeat below our holding in the AT&T Dismissal Order in which we declined to exercise jurisdiction.

As stated in *our* November 22, 2000, Order, until the issue of the Eleventh Amendment immunity from federal appeal under the Act is resolved by the Courts of the United States, we will not act solely under the Act's federally conveyed authority in matters that might arguably implicate a waiver of the Commonwealth's immunity, including the arbitration of rates, terms, and conditions of interconnection agreements between local exchange carriers. (AT&T Dismissal Order, p. 2.)

In Verizon Md. Inc. v. Public Serv. Comm'n of Md., 535 U.S. \_\_\_, 70 USLW 4432 (2002) ("Verizon Md. v. PSC of Md."), the Supreme Court held that the federal courts have jurisdiction under 28 USC § 1331 to review state commission orders for compliance with the Act or with an FCC ruling issued thereunder and that suit against individual members of the state commission may proceed under the doctrine of Ex Parte Young, 209 U.S. 123 (1908). However, Verizon Md. v. PSC of Md. did not disclose whether state commissions waive their sovereign immunity by participating in § 252 matters nor whether Congress effectively divested the states of their Eleventh Amendment immunity from suit under § 252 of the Act.

The Commission finds that the Arbitration Petition of Cavalier should be dismissed so that the parties may proceed before the FCC. It shall be the responsibility of the parties to serve copies of all pleadings filed herein on the FCC.

Order of Dismissal, Case No. PUC-2002-00171, at pp. 2-5 (footnotes omitted).

The SCC has thus refused to arbitrate using the federally mandated framework, and Cavalier files this Petition to pursue the rights granted to it by the Act.

## **II. The SCC Failed to Act.**

The Commission's authority to assert jurisdiction under section 252(e)(5) of the Act is premised on a finding that a state commission has "failed to act" in "any proceeding or other matter under [§ 252]." As it has done in several other cases, the SCC has unequivocally refused to arbitrate a revised agreement between Cavalier **and** Verizon in accordance with the mandates set forth in §§ 251 and 252 of the Act. The SCC's

refusal to act could be no more plain or evident—a state commission’s refusal to arbitrate an agreement under § 252 constitutes a failure to act within the meaning of § 252(e)(5).

In the past, the SCC has allowed parties the opportunity to proceed with arbitration solely under Virginia law.’ In this case, however, the SCC instead clearly ordered that it “will not arbitrate the interconnection issues.” (Order of Dismissal at p. 5.) This plain statement is a plain and simple failure to act that triggers the Commission’s obligation to assume jurisdiction of this matter pursuant to § 252(e)(5).

### **III. The Commission Should Preempt the SCC’s Jurisdiction.**

Because of the SCC’s outright refusal to proceed with arbitration under federal law, the grant of this Petition would be consistent with the requirements of §§ 251 and 252(e)(5), as well as this Commission’s decisions in a quartet of decisions involving WorldCom, Starpower, Cox, and AT&T.<sup>2</sup>

The Act is clear--§ 252(e)(5) requires the Commission to preempt the jurisdiction of a state commission in any proceeding or matter in which the state commission “fails to act to carry out its responsibility” under § 252. Specifically, § 252(e)(5) provides that:

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<sup>1</sup> See, e.g., Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to 6 252(e)(5) of the Telecommunications Act of 1996 and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc., CC Docket No. 00-218, FCC 01-20 (rel. Jan. 19, 2001), at p. 2 (discussing SCC’s Sept. 13, 2000 Order in case brought by WorldCom, Inc.) (hereinafter cited as WorldCom).

<sup>2</sup> See WorldCom, supra; Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to § 252(e)(5) of the Telecommunications Act of 1996, CC Docket No. 00-52, FCC 00-216 (rel. June 14, 2000); Cox Virginia Telecom, Inc., Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to 6 252(e)(5) of the Telecommunications Act of 1996, CC Docket No. 00-126, DA 00-21 18 (rel. Sept. 18, 2000); Petition of AT&T Communications of Virginia, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to 6 252(e)(5) of the Telecommunications Act of 1996, CC Docket No. 00-251, DA 01-198 (rel. Jan. 26, 2001).

If a State commission fails to act to carry out its responsibility under this section *in any proceeding or other matter under this section*, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State Commission. 47 U.S.C. § 252(e)(5) (emphasis added).

The Commission has expressly acknowledged its authority to preempt a state's jurisdiction in these instances.<sup>3</sup>

The language of § 252(e)(6) of the Act further supports grant of this Petition. There, Congress unequivocally stated that “[i]n a case where a State fails to act as described in [section 252(e)(5)], the proceeding by the Commission under such paragraph and any judicial review of the Commission's actions shall be *the exclusive remedies* for a State commission's failure to act.” 47 U.S.C. § 252(e)(6) (emphasis added). Congress thus directed this Commission to serve as an alternative forum for mediation, arbitration and enforcement proceedings if a state fails to carry out its responsibilities under § 252.

#### **IV. The Procedures Established in AT&T/Cox/WorldCom Should Be Followed.**

The Commission has already adopted procedures in arbitrations with a genesis similar to that of Cavalier's arbitration request in this Petition. See In the Matter of Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended, FCC 01-21, 16 FCC Rcd 6231 (rel. Jan. 19, 2001); Procedures Established for Arbitration of Interconnection Agreements Between

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<sup>3</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 11628, ¶ 1285 (1996) (subsequent history omitted). The Commission has also acknowledged its authority to enforce an agreement in specific instances where the state commission fails to act. See Starpower, supra, at ¶ 7; Cox, supra, at ¶ 4.

Verizon and AT&T, Cox. and WorldCom, CC Docket Nos. 00-218, 00-249, 00-251, DA 01-270 (Feb. 1, 2001).

Cavalier respectfully requests that the Commission follow these same procedures, and adopt a similar procedural schedule, in proceeding forward with its preemption of the SCC's jurisdiction to arbitrate Cavalier's interconnection agreement with Verizon.

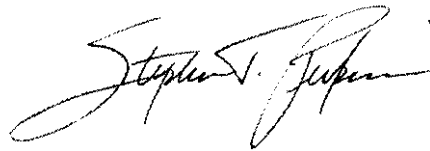
**V. Conclusion**

For the reasons stated above, petitioner, Cavalier Telephone, LLC, respectfully requests that the Federal Communications Commission preempt the jurisdiction of the Virginia State Corporation Commission to arbitrate Cavalier's interconnection agreement with Verizon Virginia Inc., because of the Virginia State Corporation Commission's failure to act on Cavalier's request for arbitration. Cavalier further respectfully requests that this Commission grant Cavalier such other relief to which it may be legally or equitably entitled.

Dated: November 7, 2002.

Respectfully submitted,

**CAVALIER TELEPHONE, LLC**



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Stephen T. Perkins  
Donald F. Lynch, III  
Cavalier Telephone, LLC  
2134 West Laburnum Avenue  
Richmond, Virginia 23227-4342  
Telephone: 804.422.4517  
Fax: 804.422.4599  
e-mail: [sperkins@cavtel.com](mailto:sperkins@cavtel.com),

Alan M. Shoer  
Cavalier Telephone, LLC  
1275 K Street, N.W.  
Third Floor, Box 301  
Washington, D.C. 20005  
Telephone: 202.371.0913  
Fax: 202.216.0594  
e-mail: [ashoer@cavtel.com](mailto:ashoer@cavtel.com),

- and -

Christopher W. Savage  
John C. Dodge  
Cole, Raywid & Braverman, LLP  
1919 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
Telephone: 202.659.9750  
Fax: 202.452.0067  
e-mail: [chris.savaae@crblaw.com](mailto:chris.savaae@crblaw.com)



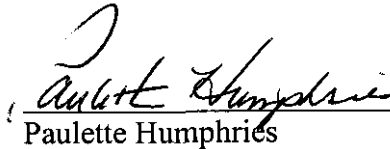
**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of November, 2002, I caused a copy of the foregoing Petition, together with the accompanying Affidavit of Martin W. Clift, Jr., and the attachments to that Affidavit, to be served on the following by overnight delivery:

Lydia R. Pulley, Esquire  
Vice President and General Counsel  
Verizon Virginia Inc.  
600 East Main Street, 11<sup>th</sup> Floor  
Richmond, Virginia 23219, and

William H. Chambliss, Esquire  
General Counsel  
State Corporation Commission  
Tyler Building  
1300 East Main Street, 10<sup>th</sup> Floor  
Richmond, Virginia 23219, and

Kelly L. Faglioni  
Hunton & Williams  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219.

  
\_\_\_\_\_  
Paulette Humphries

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Cavalier Telephone, LLC	)	
Pursuant to Section 252(e)(5) of the	)	WC Docket No. 02-_____
Communications Act for Preemption	)	
of the Jurisdiction of the Virginia State	)	
Corporation Commission Regarding	)	
Interconnection Disputes with Verizon	)	
Virginia Inc. and for Arbitration	)	

**AFFIDAVIT OF MARTIN W. CLIFT, JR. IN SUPPORT OF**  
**PETITION OF CAVALIER TELPEHONE, LLC**

I, Martin W. Clift, Jr., state as follows for my affidavit:

1. Since 1998, I have been employed as Vice President — Regulatory for Cavalier Telephone, LLC (“Cavalier”).
2. In that capacity, I know the following to be true and correct
3. On January 13, 1999, Cavalier signed an interconnection agreement with Bell Atlantic-Virginia, Inc. (“BA”), the predecessor-in-interest to Verizon Virginia Inc. (“Verizon”). In that agreement, Cavalier opted into an agreement between BA and MCImetro Access Transmission Services of Virginia Inc. (“MCImetro”).
4. The SCC approved the agreement on June 21, 1999, in Case No. PUC990048.
5. The original MCImetro agreement expired on July 17, 2000, but its terms continue in effect month to month until a successor agreement becomes effective.

6. Cavalier formally requested negotiation of a new interconnection agreement with Verizon by letter dated March 6, 2002. (A true and correct copy of that letter is attached as Exhibit "A" to my Affidavit.)
7. On August 14, 2002, after several months of unsuccessful negotiations, Cavalier filed with the SCC a petition for arbitration of nineteen unresolved issues with Verizon. (A true and correct copy of that petition is attached as Exhibit "B" to my Affidavit.) The SCC docketed the case as No. PUC-2002-00171.
8. Verizon filed its response on September 9, 2002, raising six additional issues. (A true and correct copy of that response is attached as Exhibit "C" to my Affidavit.)
9. Cavalier filed its response to these six new issues on October 4, 2002. (A true and correct copy of that response is attached as Exhibit "D" to my Affidavit.)
10. On October 11, 2002, the SCC issued ~~an~~ Order of Dismissal in Case No. PUC-2002-00171, refusing to arbitrate the agreement between Cavalier and Verizon. (A true and correct copy of that Order is attached as Exhibit "E" to my Affidavit.)

Dated: November 7, 2002.

I declare under the penalty of perjury of the laws of the United States that the foregoing is true and correct.

*Martin W. Clift, Jr.*

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Martin W. Clift, Jr.

## **EXHIBIT LIST**

**Exhibit A** -- Cavalier Letter Requesting Initiation Of Negotiations For A New Interconnection Agreement With Verizon (March 6,2002).

**Exhibit B** -- Cavalier Petition For Arbitration Filed With The Virginia State Corporation Commission, docketed Case No. PUC-2002-00171 (filed August 14,2002).

**Exhibit C** -- Verizon Response to Cavalier Arbitration Petition (filed September 9,2002).

**Exhibit D** -- Cavalier Response To Six New Issues Raised In Verizon Response (filed October 4, 2002).

**Exhibit E** -- Virginia State Corporation Commission Order of Dismissal, Case No. PUC-2002-00171 (October 11,2002).

**Exhibit A**

Cavalier Letter Requesting Initiation Of Negotiations For A New Interconnection Agreement  
With Verizon (March 6,2002).



Jeff Masoner  
Vice President, Interconnection Policy and Planning  
Bell Atlantic Wholesale Markets  
1320 North Court House Road, 2<sup>nd</sup> Floor  
Arlington, VA 22201

March 6, 2002

Re: Request to Renegotiate Interconnection Agreements – VA, MD, PA, DE, DC, and NJ

Dear Mr. Masoner,

The purpose of this letter is *to* start a new 135-day negotiation clock to develop a combined interconnection agreement for Cavalier Telephone L.L.C. and Cavalier Telephone Mid-Atlantic L.L.C pursuant to Section 252 of the Telecommunications Act.

The current Virginia, Maryland, Delaware, New Jersey, and Pennsylvania agreements have ~~expired~~ ~~The District of Columbia~~ agreement expires September 30, 2002. We are initiating negotiations to have one common agreement for all of our operating areas with separate pricing attachments or other amendments that might be necessary to comply with specific state directives.

Please note that we currently have negotiations in progress for New Jersey and Virginia – Venzon South. We are requesting that these negotiations now fall under this umbrella.

Please reply with your concurrence to this request. If you have any questions please contact me at 804-422-4515.

Thank you

Sincerely,

A handwritten signature in cursive script that reads "Martin W. Clift, Jr.".

Martin W. Clift, Jr.  
Vice President - Regulatory Affairs

**Clift, Marty**

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From: Clift, Marty  
Sent: Thursday, March 14, 2002 9:32 AM  
To: 'miller.michelle@verizon.com'  
Subject: RE: Request for Negotiations - Verizon/Cavalier Telephone

Thank you

-----OriginalMessage-----

From: miller.michelle@verizon.com [mailto:miller.michelle@verizon.com]  
Sent: Thursday, March 14, 2002 9:26 AM  
To: mclift@cavtel.com  
Cc: hernando.a.londono@verizon.com  
Subject: Request for Negotiations - Verizon/Cavalier Telephone

Martin,

Verizon has received Cavalier Telephone's request for negotiations for the states of Virginia (VZE), New Jersey, Pennsylvania, Maryland, Delaware and District of Columbia. The start date for this negotiation is March 11, 2002, the date we received your request.

Pursuant *to* your request, I have attached for your review a draft for the purpose of initiating negotiations between Cavalier and Verizon. In addition, I have attached the Verizon State Specific Guide. This guide should be used in conjunction with the draft document. The draft document and guide are subject to change throughout the negotiation process.

On April 18, 2001, the Federal Communications Commission ("FCC") adopted an order addressing the charges that carriers may bill to and collect from each other in connection with their exchange of dial-up Internet traffic. See, Order on Remand and Report and Order, CC Docket Nos. 96-98, 99-68 (adopted April 18, 2001) (the "Order"). Pursuant to the terms of the Order, Verizon offers to all CLECs and CMRS providers an optional reciprocal compensation rate plan for termination of non-Internet traffic subject to Section 251(b)(5). Under this optional plan, such traffic exchanged between Verizon and a CLEC or CMRS provider in a given state will be subject to compensation at the same rate applicable to Internet traffic in that state under the terms of the Order. The specific terms and conditions applicable to this optional rate plan are available from either Renée Ragsdale or you, designated Verizon Negotiator.

In addition, please complete the attached Information Request Form for each state where you have requested negotiations and return them to me.

At your convenience, please contact your negotiator, Hernando Landono, either by telephone at (212) 395-4043 or email at [hernando.a.londono@verizon.com](mailto:hernando.a.londono@verizon.com) with any questions you may have regarding this agreement.

The Verizon Support Website will provide you with additional information.

The URL address is <http://www.verizon.com/wise>.

Michelle Miller  
Specialist - Contract Management  
Network Services  
(972)718-4927  
(972)718-1279 Fax  
[miller.michelle@verizon.com](mailto:miller.michelle@verizon.com)

(See attached file: IRF.doc)(See attached file: verizon slate specific guide v2.3-021402.doc)(See attached file: Verizon Comprehensive Agreementv2.3-121201.doc)(See attached file: appa-comp-de.doc)(See attached file: appa-comp-dc.doc)(See attached file: appa-comp-md.doc)(See attached file: appa-comp-nj.doc)(See attached file: appa-comp-pa-west.doc)(See attached file: appa-comp-pa-BA.doc)(See attached file: appa-comp-va-BA.doc)



**Exhibit B**

Cavalier Petition For Arbitration Filed With The Virginia State Corporation Commission,  
docketed Case No. PUC-2002-00171 (filed August 14,2002).

**BEFORE THE  
VIRGINIA STATE CORPORATION COMMISSION**

Petition of	)	
	)	
Cavalier Telephone, LLC.	)	Case No. PUC2002 _____
	)	
For Arbitration with Verizon Virginia, Inc.	)	
<del>pursuant to 47 U.S.C. § 252(b) of the</del>	<del>)</del>	<del>_____</del>
<del>Communications Act of 1934, as amended by the</del>	<del>)</del>	<del>_____</del>
Telecommunications Act of 1996	)	

**PETITION OF CAVALIER TELEPHONE, LLC  
FOR ARBITRATION**

Cavalier Telephone, LLC (“Cavalier”), through its undersigned counsel, hereby petitions the Virginia State Corporation Commission (“Commission”) to arbitrate unresolved issues in the negotiation of ~~an~~ interconnection agreement with Verizon Virginia, Inc, (“Verizon”), pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“Act”), and the Commission’s Procedural Rules for Implementing Sections ~~25~~ 1 and 252 of the Act, 20 VAC §§ 5-419-10 *et. seq.* In support of this Petition, Cavalier states as follows:

**PARTIES**

1. Petitioner Cavalier a certificated local exchange carrier providing service in competition with Verizon in various locations throughout Virginia. Cavalier is a “local exchange carrier” ~~and~~ a “telecommunications carrier” within the meaning of the Act,’ and a local

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<sup>1</sup> 47 U.S.C. §§ 153(26); 153(44).

exchange telecommunications provider under Virginia law,<sup>2</sup> as authorized by the Commission pursuant to Va. Code Ann. §56-265.4-4.<sup>3</sup> Cavalier's official business address is:

2134 West Laburnum Ave.  
Richmond, Virginia 23227

2. The names, addresses, and contact numbers of Cavalier's representatives for purposes of this proceeding are as follows:

Martin W. Clift, Jr.  
Vice President, Regulatory Affairs  
Cavalier Telephone, LLC  
2134 W. Laburnum Ave.  
Richmond, VA 23227  
804.422.4515 (tel)  
804.422.4599 (fax)  
[mcliR\(ii,cavtel.com](mailto:mcliR(ii,cavtel.com)

Stephen T. Perkins  
General Counsel  
Cavalier Telephone, LLC  
2134 W. Laburnum Ave.  
Richmond, VA 23227  
804.422.4517 (tel)  
804.422.4599 (fax)  
[sperkins@,cavtel.com](mailto:sperkins@,cavtel.com)

Alan M. Shoer  
Assistant General Counsel  
Cavalier Telephone, LLC  
1275 K Street, NW  
Washington, DC 20005  
Tel: 804.422.4518  
Fax: 202.216.0594  
[ashoer@cavtel.com](mailto:ashoer@cavtel.com)

Christopher W. Savage, **Esq.**  
Cole, Raywid & Braverman  
1919 Pennsylvania Ave. N.W., Suite 200  
Washington, DC 20006  
Tel: (202) 828-9811  
Fax: (202) 452-0067  
[chris.savage@crblaw.com](mailto:chris.savage@crblaw.com)

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<sup>2</sup> See 20 Va Admin Code § 5-400-180 (2001).

<sup>3</sup> See ~~Application of Cavalier For A Certificate of Public Convenience and Necessity, Case Numbers TT-61A and T-431~~, as issued to Cavalier by the Virginia State Corporation Commission by Final Order dated January 14, 1999.

3. Respondent Verizon is ~~an~~ incumbent provider of local exchange services within portions of Virginia. Verizon's offices are located at 1320 North Court House Road, Arlington, Virginia, 22201. Verizon is, and at ~~all~~ relevant times has been, an "incumbent local exchange carrier" ("ILEC") under the terms of the Act.<sup>4</sup> Verizon Virginia, Inc. is, and at all relevant times has been, a "Bell Operating Company" under the terms of the Act.

41 ~~The name, address and contact number for Verizon's representatives during the~~  
negotiations with Cavalier is as follows:

Hernando A. Londono  
Gary Lihrizzi  
Jim Pachulski  
2107 Wilson Blvd., 11th Floor  
Arlington, VA 22201  
(212) 395-4043 (telephone)  
hernando.a.lon&ono@-Jerizon.com

Verizon's Local Counsel is:

Lydia R. Pulley  
Vice President and General Counsel  
Verizon Virginia, Inc.  
600 East Main Street, 11<sup>th</sup> Floor  
Suite 1100  
Richmond, Virginia 23219  
Tel: (804) 772-1547  
Fax: (804) 772-2143

## JURISDICTION

5. The Commission has jurisdiction over Cavalier's Petition pursuant to Section 252 of the Act and the Commission's Procedural Rules for Implementing Sections 251 and 252 of the Act, 20 VAC §§ 5-419-10 *et. seq.*<sup>5</sup> Under the Act, parties to a negotiation for interconnection, access to unbundled network elements, or resale of service within a particular state, have a right

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<sup>4</sup> See 47 U.S.C. § 251(h).

<sup>5</sup> See also, Va. Code Ann. § 56.1 et seq. (2001).

to petition the state commission for arbitration of any open issues whenever negotiations between them fail to yield an agreement! Under Section 252(b)(1) of the Act, the request for arbitration of the state commission may be made at any time during the period from the 135<sup>th</sup> day to the 160<sup>th</sup> day (inclusive) after the date on which the incumbent LEC receives a request for negotiations under Section 251 of the Act. A copy of an email memorializing the date (March 11, 2002) upon which the parties agreed negotiations for an interconnection agreement with Verizon began is attached in Exhibit “A”. This Petition is timely filed within 160 days of that date.

### STANDARD OF REVIEW

6. This arbitration must be resolved under the standards established in 47 U.S.C. §§ 251 and 252, applicable rules and orders issued by the Federal Communications Commission (“FCC”), including 47 C.F.R. 51.5 *et seq.* Further, pursuant to 20 VAC 5-400-180(F)(6) of the Commission’s Procedural Rules for Implementing Sections 251 and 252 of the Act, 20 VAC 5-419-10 *et. seq.*, the Commission may arbitrate contested interconnection issues. Accordingly, Cavalier requests that the Commission make an affirmative finding that the rates, terms and conditions that Cavalier requests in this arbitration proceeding are consistent with the requirements of applicable federal and state law. Cavalier requests that the Commission conduct an evidentiary hearing, and appoint an arbitrator, arbitration panel, or administrative law judge to preside over this proceeding.

7. Cavalier is aware that the Commission previously has declined to exercise jurisdiction over interconnection arbitrations involving federal law and instead has referred the

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<sup>6</sup> 47 U.S.C. § 252(b)

matters to the FCC for resolution.<sup>7</sup> Cavalier wishes to have its disputed interconnection issues decided under applicable federal law and does not oppose consideration of its Petition by the FCC. To the extent the Commission retains jurisdiction over any portion of the Petition, however, Cavalier requests a hearing pursuant to 20 VAC 5-419-30(1).<sup>8</sup>

## NEGOTIATIONS

8. Cavalier has been negotiating with Verizon over interconnection matters for several months (beginning in 2001 in Virginia and New Jersey). For purposes relevant to this Petition, with respect to Virginia, Cavalier sent a letter to Verizon on March 6, 2002 (attached in Exhibit "A") requesting to begin the negotiation process for all of Cavalier's operating states (Delaware, Virginia, Maryland, Pennsylvania, Washington, D.C. and New Jersey). In that letter Cavalier requested to "roll in" the on-going negotiations from Virginia and New Jersey that had occurred since 2001. In short, Cavalier wished to start fresh with negotiations for all its regions, seeking one interconnection agreement that could be adapted for use in all of Cavalier's operating jurisdictions, and that request was made in writing by Mr. Clift's letter to Mr. Masoner, dated March 6, 2002.

9. Verizon responded in an email, dated March 11, 2002 (Michelle Miller to Mr. Clift), also attached in Exhibit "A," acknowledging Cavalier's request to begin negotiations towards one agreement for application in Pennsylvania, Maryland, Delaware and Washington,

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<sup>7</sup> See *Petition of Global NAPs South, Inc., for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon Virginia, Inc.*, Case No. PUC020001, Preliminary Order (Va. SCC Feb. 20, 2002) at 2-3. See also, *id.*, *Order of Dismissal* (Va. SCC March 20, 2002); See also *In the Matter of Petition of WorldCom, Inc., Cox Virginia Telcom, Inc. and AT&T Communications of Virginia Inc for preemption of the jurisdiction of the Virginia State Corporation Commission regarding interconnection disputes with Verizon Virginia Inc., and for expedited arbitration pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-218, 00-249, 00251, DA No. 02-1731 (Memorandum and Order Released July 17, 2002) ("Consolidated Virginia Arbitration Order").

<sup>8</sup> Whichever forum the Commission selects, Cavalier requests that the Commission make **this** determination on an expedited basis, whereupon Cavalier will promptly seek adjudication of this **matter** before the FCC.

D.C. Follow-up emails from Mr. Clift requested that Virginia and New Jersey be included in the list, and, on March 14, 2002, Verizon confirmed that a new time frame would apply to all states (Delaware, Virginia, Maryland, Pennsylvania, Washington, D.C. and New Jersey).<sup>9</sup> Also, Verizon confirmed that the starting date for all states and jurisdictions would be March 11, 2002. Ms. Miller of Verizon also provided a generic draft Verizon template agreement with state specific attachments for all jurisdictions. Thus, the parties contemplated that the outcome of the negotiations generally would bind the parties respective operations in these regions, save for state specific requirements.” A copy of the various emails and correspondence, without exhibits, is attached as Exhibit “B.”

10. However, for reasons that have never been explained to Cavalier, and despite Ms. Miller’s sending Cavalier a Verizon template document for use in all states, Verizon, without checking or agreeing with Cavalier, sent Cavalier on May 17, 2002 a marked up version of the current New Jersey/Conectiv Communications, Inc. (“Conectiv”) agreement (in force between the parties in New Jersey as a result of the acquisition of Conectiv by Cavalier). Cavalier told Verizon that it could not make out the changes from the existing agreement, and requested a short list of Verizon changes and/or issues that Cavalier could review. However, Verizon has not yet provided Cavalier with such a separate list of its issues to be incorporated into the agreement.

11. Accordingly, on May 29, 2002, Cavalier sent Verizon a clear list of its on-going issues that Cavalier believed needed to be addressed, regardless of which baseline agreement the

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<sup>9</sup> Attached in Exhibit “B” are all the emails and correspondence chronologically that evidence the negotiations and discussions that have taken place thus far.

<sup>10</sup> Because most of Cavalier’s current Interconnection Agreements with Verizon have expired, or are set to expire soon, it has been the goal of the parties to negotiate the terms of an agreement that can be implemented in all the jurisdictions that Cavalier operates in; namely, the jurisdictions of Virginia, Maryland, the District of Columbia, Delaware, Pennsylvania, and New Jersey.

parties used. Cavalier's list was based on several years of experience of unresolved interconnection problems existing between the parties. Verizon, however, insisted on working off its marked up New Jersey agreement, while Cavalier indicated that it preferred to use the existing agreement operative in Virginia (an MCI/Metro agreement). And, in preparation for further conference calls to discuss the matters, Cavalier provided Verizon with a marked up ~~amendment to the existing MCI/Metro interconnection agreement in Virginia, on July 12,~~ 2002."

12. The parties then began a series of weekly conference calls, and during the calls Cavalier made clear, again, that it wished to use the existing Virginia agreement as the template. It was (~~and~~ remains) Cavalier's hope that these negotiations would resolve a distinct and narrow set of issues first, which could then be incorporated into the selected underlying interconnection template operative in that state. The reason that Cavalier suggested using the MCI/Metro agreement was due to the fact that it has been in use for much of the company's existence in Virginia."

13. During the telephone conferences with Verizon over the last several weeks Verizon requested that Cavalier supply proposed language related to the issues raised by Cavalier, and Cavalier has complied, sending Verizon suggested language that could be incorporated into the MCI/Metro agreement. This suggested language was again sent to

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<sup>11</sup> The Commission ~~has~~ the existing MCI/Metro agreement on file that ~~was~~ approved for use by Cavalier and Verizon. If the Commission would like a further copy, Cavalier can provide the Commission with one.

<sup>12</sup> In an email dated July 30, 2002, in the hopes of further expediting the resolution over the impasse of which agreement to use as the template, Cavalier offered to use the soon-to-be filed **conforming** agreement in the FCC's Consolidated Virginia Arbitration between Verizon and AT&T, MCI, and Cox Communications, given that this agreement represents the most up-to-date position of the FCC on the proper application of the Act and the FCC's implementing rules to many of ~~the~~ industry-wide disputes over interconnection terms. Cavalier proposed to use this ~~conforming agreement as the template for all of the operative jurisdictions, to simplify the matter, thus only~~ leaving the unresolved issues on the list provided to Verizon to be worked in. Verizon has not provided Cavalier with an adequate response to this request, as of the date of ~~this~~ filing.



Verizon on July 30, 2002 (attached as Exhibit “C”) with annotations, explanation and notes reflecting the parties’ negotiations to date. Verizon has not, as of the date of this filing, responded to Cavalier’s proposed language. Finally, while the parties have not resolved their differences, Cavalier has, and will continue to, negotiate in good faith with Verizon in an effort to resolve these disputed issues while this arbitration is pending, and will notify the Commission if and when arbitration of certain issues is no longer necessary.

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### **STATEMENT OF UNRESOLVED ISSUES**

**14.** As discussed below, several important matters separate the parties. Cavalier has several years of frustrating experiences with many of these issues first hand, and has raised these matters in several on-going proceedings. Cavalier is hopeful that these parties can reach resolution of these issues with the aid of the Commission in the context of this arbitration. These unresolved issues are now presented

#### ***Issue No. 1: Interconnection Agreement***

##### **Description of Issue:**

Which interconnection agreement shall form the template with which to work in changes and amendments particular to the network relationship between Cavalier and Verizon?

##### **Cavalier Position:**

Cavalier believes that there are very solid reasons for starting with the existing interconnection agreement that is operative in the state as the basic document from which to negotiate our next agreement. The existing agreement has been in force for several years; in very broad terms it “works,” in that the parties are presently operating under it, and — while there are several areas that need to change, as noted below — it addresses the key issues of the ILEC-CLEC relationship; and it was approved by the relevant state regulators, and therefore meets the basic requirements of the law. Given that this was legally acceptable when it was adopted, changes to it should be justified by changed circumstances, not by some general desire on the part of either party to simply generically “update” the terms. As an alternative, Cavalier has proposed using the non-to-be-filed conforming agreement in the Consolidated Virginia Arbitration at the FCC as the template for use in all of the other states.